

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio Edison)	
Company, The Cleveland Electric Illuminating)	
Company and The Toledo Edison Company for)	Case Nos. 12-1230-EL-SSO
Authority to Provide for a Standard Service)	
Offer Pursuant to R.C. § 4928.143 in the Form)	
of an Electric Security Plan.)	

**REPLY BRIEF OF
THE RETAIL ENERGY SUPPLY ASSOCIATION,
DIRECT ENERGY SERVICES, LLC AND DIRECT ENERGY BUSINESS, LLC**

June 29, 2012

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I. INTRODUCTION

This Reply Brief will correct several misstatements and faulty analysis contained in the Initial Post-Hearing Brief of Ohio Edison Company, the Cleveland Electric Illuminating Company and the Toledo Edison Company (collectively, “Companies” or “FirstEnergy”). The Public Utilities Commission of Ohio (“Commission”) should reject these arguments and direct the Companies to implement a purchase of receivables (“POR”) program, set up a workshop to develop a supplier consolidated billing system, implement the provisions of the FirstEnergy/Exelon letter agreement as to EDI information exchange between competitive retail electric service (CRES) providers and upgrade the CRES supplier website as per Mr. Bennett’s recommendations.

II. ARGUMENT

A. The absence of a POR program or supplier consolidated billing is contrary to the policy of this state.

At pages 60-61 of its initial brief, the Companies imply that because a high percentage of customers are shopping, the statutory requirement of Section 4928.02(B), Revised Code to

encourage a variety and diversity of supplies and suppliers is being fulfilled. FirstEnergy misinterprets the statute. The plain language of Section 4928.02(B), Revised Code states that it is the policy of Ohio to “ensure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions and quality options they elect to meet their respective needs.”

Thus, the policy of this state requires more than just shopping -- it requires that consumers be provided with real choices. These real choices consist of choice of supplier along with product choices including contracts of different price, term, and special conditions. Further, the General Assembly required that the Commission enforce subsection B and take action to ensure customers have a diverse set of supplies and suppliers. Today, especially for residential customers, there are few choices in the Companies’ service territories. As more fully detailed in the initial brief of Retail Energy Supply Association (“RESA”) and Direct Energy Services, LLC / Direct Energy Business LLC (“Direct Energy”), ninety-six percent (96%) of all residential shopping in the FirstEnergy service area is done *via* governmental aggregation groups. Further, there is virtually only one product and with the exception of the Village of Swanton (population 3,627¹) there is only one supplier for all governmental aggregated residential customers. Finally, the one product is a small discount off the standard service price. Simply put, for virtually all residential customers today, products actually provided to customers consist of the standard service offer, or, if they are lucky enough to live in an aggregated community, the standard service offer minus a few percent².

Further, for residential customers who want to shop there are simply few suppliers to choose from. There are only five CRES providers posting offerings on the Apples-to-Apples

¹ US Census Bureau 2009 – As presented on Google.

² NOPEC/NOAC Exhibit 1 at 10.

chart for Cleveland Electric Illuminating, Toledo Edison and Ohio Edison. By comparison, the smaller electric distribution utility, Duke Energy Ohio, alone has eleven offers – more than twice as many active offers.

The reason for this disparity, as addressed by the joint testimony of RESA (the trade association of retail energy suppliers with some 25 members) and Direct Energy as well as IGS, is the lack of a POR program. As demonstrated in Ms. Ringenbach's testimony, the lack of a POR program is a major barrier to more CRES providers entering the residential market. Implementing a POR program would remedy CRES providers issues with: 1) the payment allocation policy of FirstEnergy; 2) lack of CRES billing information; and 3) practical inability to quickly stop supplying customers who are not paying³.

Citing the cross examination of Ms. Ringenbach of RESA/Direct Energy and Mr. Parisi of IGS, FirstEnergy claims that CRES providers admit they are not suffering a competitive disadvantage from the lack of a POR program⁴. The quote cited in the brief is taken out of context. Ms. Ringenbach, in response to a question that the Direct Energy entities and other CRES providers are all on the same level playing field, agreed that there is no purchase of receivables for any CRES provider. That is true, but it misses the essential point that without a POR program there will be a barrier that will continue to exist that will inhibit the increase in suppliers, price, terms, conditions and quality options that the General Assembly sought to have supplied to retail customers.

At pages 61-62 of its Initial Brief, FirstEnergy argues that POR programs provide a subsidy to CRES providers that undermine the market and send the wrong price signals to customers in violation of Section 4928.02(H), Revised Code. This is not accurate. The accurate

³ RESA Exhibit 3 at 5-6.

⁴ FirstEnergy Initial Brief, at 61.

statement would be that the independent CRES providers are merely asking for the same treatment for their shopping customers in terms of socializing the cost of those customers who cannot pay as that used by FirstEnergy for the standard service customers. Today, all three FirstEnergy Ohio electric distribution utilities impose a bad debt tracker to collect the uncollectible wires charges from all customers – including shopping customers⁵. Similarly, FirstEnergy’s Ohio electric utilities employ a bad debt tracker for the generation portion of the standard service offer⁶. The CRES providers in this proceeding merely ask that the existing bad debt tracker of generation be expanded to include shopping as well as standard service customers and that the CRES be treated like the utility in that it is made whole for the delivered energy at the contract price. It should also be noted that RESA/Direct Energy ask for POR only for residential and small commercial customers where there are a dearth of suppliers and few retail electric service products to choose from.

Treating the CRES providers and the utility the same as to the treatment of bad debt is not the creation of a subsidy; rather, it simply puts “competitive services”⁷ supplied by CRES (generation) on the same footing as the “competitive services” supplied by the utility. If the establishment of a POR program violated Section 4928.02(H), Revised Code, as claimed by FirstEnergy, then the Commission acted illegally when it approved a bad debt tracker with the purchase of receivables for Duke Energy Ohio⁸.

At page 62 of its Initial Brief, FirstEnergy also argues that a POR program may also lead to higher amounts of uncollectible expenses. Such is true in nominal terms as the addition of just

⁵ See CEI Tariff, PUCO No. 13, Ohio Edison Company Tariff, PUCO No. 11, and Toledo Edison Company Tariff, PUCO No. 8, Sheets 99.

⁶ See Rider NOU (Non-Distribution Uncollectible Rider), CEI Tariff, PUCO No. 13, Ohio Edison Company Tariff, PUCO No. 11, and Toledo Edison Company Tariff, PUCO No. 8, Sheets 110.

⁷ Generation is deemed a competitive service, Section 4928.03, Revised Code.

⁸ See In Re Duke Energy Ohio, Inc., Case No. 11-3549-EL-SSO, et al., Opinion and Order, November 22, 2011 at 18.

one delinquent shopping customer for collection of bad debt via the bad debt tracker would increase the total number of dollars going through the tracker. That is not the operable statistic, though, for while adding the shopping customers' bad debt to the tracker would increase the number of dollars to be collected, it would also increase the number of customers who pay the bad debt tracker. Thus, the important statistic -- the cost per residential and small commercial customer per kWh basis -- may not be affected or could decrease.

On page 64 of its initial brief, FirstEnergy states "Utilities do not presently have the ability to disconnect for nonpayment of charges provided by CRES providers". The source of this statement is not the Ohio Revised Code, for there is no statutory prohibition against shut offs for failure to pay for energy and capacity because it is provided by a CRES provider rather than a utility. Similarly, the source for FirstEnergy's statement is not the Ohio Administrative Code, for while Rule 4901:1-18 limits residential shut offs to unpaid utility services, there is no case law which affirmatively finds that capacity and energy are not utility services for purposes of the shut off rule. Further, even if there was such case law the Commission's rules provide for waiver⁹. Thus, if certain residential customers were gaming the system to avoid shut off by only paying the wires charge of a consolidated bill, the Commission could waive its rule for FirstEnergy.

The source cited for FirstEnergy's legal position that no utilities presently have the ability to disconnect for non-payment for charges of CRES provider is the cross examination of Teresa Ringenbach. Ms Ringenbach, is not a lawyer and was not called to the stand as a legal expert. Ms. Ringenbach, in her direct testimony, testified that Duke Energy Ohio has a POR

⁹ See Rule 4901:1-18-02(B) of the Ohio Administrative Code.

program as do all the major gas utilities¹⁰. So perhaps Ms. Ringenbach believed that the cross examination question was just for the Ohio FirstEnergy utilities and they “presently” have not taken the necessary steps to obtain such authority. The important fact for the Commission to consider is that if shut off for CRES receivables is important -- the Commission can authorize it either as part of its decision in this case, or at a subsequent time if evidence of gaming arises which cause the bad debt expense to increase.

At Page 63 of its initial brief, FirstEnergy argues that no one has performed any studies determining the effect of a POR program on low-income customers and no one has provided information regarding the extent of any costs that FirstEnergy would be compelled to cover relating to uncollectible expenses for CRES providers. With respect to the first claim that no one has performed any studies determining the effect of a POR program on low-income customers, it must be remembered that low-income customers (those at or below 150% of the federal poverty guideline) are in the Percentage of Income Payment Plan ("PIPP") Program. While according to the tariff, PIPP customers are subject to the non-distribution, uncollectible rider, PIPP customers pay only a set percentage of their income for utility service, so the actual amount flowing through the riders do not affect PIPP customers' monthly electric bill.

Additionally, the claim that no information regarding the extent of uncollectible costs was provided ignores the central fact that as the billing and collection party FirstEnergy knows exactly by account who has paid the consolidated energy and wire service bills and who has not, save for any post billing collection efforts by the CRES. As for financial risk, FirstEnergy has a non-distribution, uncollectible rider that tracks and recovers uncollectible costs when they are incurred for standard service customers. Under the CRES proposal, FirstEnergy's non-

¹⁰ RESA Ex. 3 at 6.

distribution, uncollectible rider would track and recover uncollectible costs also for shopping customers. Thus, the claim that implementing a POR Program will somehow impose a higher level of costs upon FirstEnergy is simply not accurate. As to the claim that no one has studied the effect that a POR program would have on FirstEnergy, one need only look at the data attached to Ms. Ringenbach's testimony which demonstrated that the impact on FirstEnergy of a POR program would result in a greater number of offers from suppliers.¹¹ In addition, the Commission should take note of the fact that FirstEnergy's Pennsylvania electric distribution utilities offer POR programs.¹² Thus, there is no need to study the effect that a POR Program would have on FirstEnergy Ohio because FirstEnergy is already providing the same service in Pennsylvania. The costs from the POR Program that are uncollectible would simply go to the bad tracker and would not have significant financial impact on FirstEnergy.

FirstEnergy argues at page 63 of its initial brief that none of the parties advocating for a POR program have demonstrated that there is a need for such a program. This statement ignores the testimony of Ms. Ringenbach. She explained that the largest barrier to competition that exists in the FirstEnergy system is the lack of a POR program¹³. She explained that a POR program would be one of the most significant steps the Commission could take to encourage more CRES providers to enter into the FirstEnergy market and help remedy the barriers to competition that are against the regulatory principles or practices that guide the Commission. She testified that a POR program would allow for a single bill for customers with a single collection entity and that a POR program would make it easier for the CRES providers to verify that payments are accurate. She also indicated that a POR program is simply easier on the

¹¹ RESA Ex. 3 at Attachment A.

¹² RESA Ex. 3 at 6.

¹³ RESA Ex. 3 at 4.

customer when it comes to avoiding the collection process and remaining current on the customer's utility bill. Clearly the record demonstrates a vital need for a POR program if the Commission is to implement the policy of this state as set forth in Section 4928.02, Revised Code.

Finally, contrary to FirstEnergy's claim that adopting a POR program would create anti-competitive subsidies, unneeded costs, and unnecessary disconnections, just the opposite is true. Under a POR program, customers would be disconnected if they do not pay the energy portion of their bill same as standard service customers. What will end is the extra costs now only borne by CRES. When a CRES provider drops the customer, it must go through a collection process. This collection process causes the incurrence of extra costs. These extra costs and the risk of not being able to stop selling to customers who are not paying artificially increases the cost of energy to all shopping customers. That artificial increase is contrary to the policy of this state. Under a POR program, the Commission can choose to follow the Ohio Gas Utility and Duke Electric Utility approach, which would require any customer under a POR program to pay both the generation and distribution uncollectible rider. Suppliers would no longer keep only the good paying customers and the utility/social balance for bad debt for generation remains balanced¹⁴.

FirstEnergy also rejects the notion that the Commission should even consider supplier consolidated billing. FirstEnergy claims that supplier consolidated billing is inefficient, costly, would require the Commission to change the current system, and would allow the CRES providers to shut off a customer's electric service. There is nothing in the record that supports FirstEnergy's claims. Ms. Ringenbach testified that in a supplier/consolidated billing scenario, the CRES supplier would take over the responsibility for billing both its own charges as well as

¹⁴ RESA Ex. 3 at 12-13.

the electric utility's charges on a single bill. The CRES provider would enter into an agreement to purchase the EDU's account receivable to keep the EDU whole. The CRES provider (through the use of the utility process) would be granted authority to send the utility necessary information to implement the disconnection process for the CRES provided bill when a customer did not pay its bill. Consumer protections related to shut off would be maintained because the EDU would still keep the function of actually going to the home to disconnect for failure to pay, but would do so at the direction of the CRES provider. Supplier consolidated billing, which was provided for by Senate Bill 3, is neither inefficient nor more costly. Although the CRES provider could bill directly to customers today, most customers prefer to have one bill. An additional benefit that would flow from supplier consolidated billing would be to bring more innovative products and services to customers at a quicker pace. This is certainly consistent with the policy of this state as set forth in Section 4928.02, Revised Code.

The Commission should order FirstEnergy, within six months of the Stipulation being modified and approved, to file a report in a new docket regarding the steps necessary to implement supplier consolidated billing with shut-off capability. After the report has been submitted, the Commission should then open a comment period on the report as well as hold a technical conference on the matters raised by FirstEnergy and other commenters. The Commission can then issue an order deciding whether or not to allow for supplier consolidated billing with shut-off in the FirstEnergy service territory.

B. The Proposal to spread out the Rider AER cost recovery over several years is too costly and must be rejected.

At pages 6-9 of its initial brief, Nucor Steel Marion, Inc. ("Nucor") supports FirstEnergy's proposal to spread the recovery of Rider AER costs over several years instead of

having to recover those costs in the year the renewable energy credits (“RECs”) are utilized. Nucor argues that the spreading out of Rider AER recovery over a longer period of time is simply a way to artificially bring high renewable energy costs more in line with the actual amount of SSO load being served by FirstEnergy today as well as to reflect timing differences. (Nucor Marion Steel brief, pp. 6-8).

The problem with Nucor Marion’s position is that it ignores the long run. While it is true that the Rider AER would lower the cost of complying with the REC requirements for standard service customers in the early years, that discount will be paid back in later years with interest. So viewed over the full ESP III time period, Rider AER will ultimately raise the cost compliance with the renewable energy requirements. Further, not only will the deferral component of the Rider AER¹⁵ cost more than paying for the RECs as per the Commission’s rules, the deferrals skew the price signals for potential shoppers and would artificially dampen shopping. Finally, at a time when interest rates are low, customers under the deferral component standard service customers will be billed roughly a seven percent carrying charge on the deferred balance.¹⁶ The amount of that deferral is unknown, but in the case of Ohio Edison, for residential customers amount deferred in the first year will be \$2.18 per month per residential customer.

The deferral also creates issues of equity for it divides cost causation with cost responsibility. By deferring REC costs for several years, standard service customers who move into the service area after 2012 or 2013 will be paying for the costs of RECs required during those years. Similarly, customers who do not use the RECs being deferred in 2012 or 2013 because they were shopping, but return to standard service, will pay for 2012 and 2013 RECs a

¹⁵ RESA does not object to having a separate rider for collecting the cost of RECs, rather, RESA objects to the deferral.

¹⁶ Tr. I, 255.

second time. The skewing of price signals, the excessive carrying charges, and the mismatch of timing (making future customers pay for today's costs of RECs) should persuade the Commission to reject the deferral component of Rider AER.

C. Web-Based Enhancements to FirstEnergy's EDI System will not violate the law, but will reduce costs and make the market more competitive.

At pages 67-69 of its initial brief, FirstEnergy argues that RESA witness Bennett's requested additional enhancements are unnecessary and his arguments should be disregarded. FirstEnergy's arguments are not supported by the record.

The unrefuted testimony of Mr. Bennett was that under Attachment C of the Stipulation in ESP II (Case No. 10-388-EL-SSO) FirstEnergy pledged to create a secure web-based system in which suppliers could access customer information, one customer at a time, using the same customer number a supplier would utilize for enrollment purposes (20-digit customer number). The data provided through this web based system would display all relevant customer information a supplier would need to generate an offer. This information would mimic what FirstEnergy provides via the Eligibility Lists (with slight modifications), which is updated as much as FirstEnergy updates the internal customer record in the database, in a format that remains static¹⁷. At page 68 of its initial brief, FirstEnergy argues that Mr. Bennett was unable to represent whether his requested order would comply with Ohio law. Considering that Mr. Bennett is a retail marketing expert and not a lawyer, he could not have rendered such a legal opinion. In this brief we will address whether creation of a true web based data system can be constructed in compliance with the Commission's rules on privacy.

¹⁷ RESA Ex. 2 at 5.

Under the terms and conditions of Attachment C to the Stipulation in Case No. 10-388-EL-SSO, which were re-affirmed and proposed to remain in effect for the duration of ESP III, which is through May 31, 2016, FirstEnergy is required to provide:

... web-based system that provides electronic access to key customer usage and account data that can be accessed via a supplier website that is updated quarterly and that presents data and information including: account numbers, meter numbers, names, service addresses and billing addresses including zip codes, email addresses, meter read cycle dates, meter types, interval meter flags, rate code indicators, load profile group indicators, PLC values (capacity obligations), 24 months of consumption data in kWh by billing period including on-peak and off-peak data; 24 months of demand data (in kW) by billing period; 24 months of interval data; default service indicators (if on default service); minimum stay dates (if applicable); and identifiers of whether consumers are participating in budget plans.

If the intent was for the Commission to require FirstEnergy to provide this information in a useful format, then the Commission must direct that a web-based enhancement must be made. As it currently stands now, FirstEnergy provides some of the information listed in Attachment C via a web-based system but not in a format that will enable a CRES supplier to respond to a customer's request for an offer. At page 69 of its initial brief, FirstEnergy is apparently concerned that it will be unable to provide account numbers on eligibility lists without violating Rule 4901:1-10-24(E)(1) of the Ohio Administrative Code. That concern is misplaced. The CRES suppliers will be given the customer number from their customer in compliance with Rule 4901:1-10-24(E)(1) of the Ohio Administrative Code. With that customer number, the CRES suppliers are asking for a web-based system that will allow it to have access to integrated customer information for that particular customer, as opposed to all customers, so that it can access information and respond to that customer's request that an offer be made.

The question the Commission must ask itself is whether Mr. Bennett's recommendations are consistent with the policy of this state. In today's electric market for open access states like Ohio, both web and EDI data provision are the norm. Standardization by Ohio's electric distribution utilities with the progressive systems in other states, make it easier for more CRES suppliers to enter the Ohio market and for both domestic and new entrance to offer value products and services to retail customers. CRES providers, who have developed systems that interface with the web, EDI or both to manage customer data in other jurisdictions, will find it easier to expand into FirstEnergy EDU service territories. If the data provided is complete and uses industry standard data formats, CRES providers will have to make fewer modifications to their existing systems and can build new systems that are also usable in many competitive states. This will reduce costs. With more CRES providers, entering and investing in Ohio markets in the FirstEnergy service area, the market will become more competitive. A more competitive market with more CRES providers will almost certainly lead to more product innovation and downward pressure on customer prices for competitive services¹⁸. Mr. Bennett's recommendations that go beyond the agreement with Constellation and Exelon are certainly consistent with the policy of this state as set forth in Section 4928.02, Revised Code. It is that simple. The Commission should adopt Mr. Bennett's recommendations.

III. CONCLUSION

The Commission should direct the FirstEnergy companies to implement a purchase of receivables program. It should order FirstEnergy to take the initial steps necessary to determine whether to implement a supplier-consolidated billing system with shut-off capability. Finally, the Commission should adopt not only the FirstEnergy/Exelon letter agreement and the revised

¹⁸ RESA Ex. 2 at 5.

language in Attachment C, but also Mr. Bennett's recommended additions, modifications, standards, requirements and commitments which would make the web-based system more workable.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "M. Howard Petricoff", written over a horizontal line.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 29th day of June, 2012 by electronic mail upon the persons listed below.



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